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2
3 IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT, IN AND FOR PALM BEACH, FLORIDA

4 -----X
MONTGOMERY & LARMOYEUX, A FLORIDA GENERAL
PARTNERSHIP, by ROBERT M. MONTGOMERY, JR.,
5 GENERAL PARTNER,

6 Plaintiff,

7 -against-

Case No.
CL 97-010357 AE

8 PHILIP MORRIS, INC., R.J. REYNOLDS
TOBACCO COMPANY and MICHAEL MAHER,

9 Defendants.
10 -----X

11 February 26, 1998
3:30 p.m.

12
13 Videotaped deposition of ARTHUR
14 GOLDEN, taken by the Plaintiff, pursuant to
15 Notice, at the offices of Wachtell Lipton Rosen
16 & Katz, 51 West 52nd Street, New York, New York
17 10804, before Patricia Vigil, CSR, RPR, CRR, CM,
18 a Shorthand Reporter and Notary Public within
19 and for the State of New York.

20
21 GREENHOUSE REPORTING, INC.
22 363 Seventh Avenue - 20th Floor
23 New York, New York 10001
(212) 279-5108
24
25

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BY: DANIEL F. KOLB, ESQ.

Also Present:

Michael Maher (via telephonic
communication.)

Matthew Salvato, Videographer

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2 THE VIDEOGRAPHER: This is the video
3 operator speaking, Matthew Salvato, of
4 Greenhouse Reporting, 363 Seventh Avenue
5 New York, New York.

6 We are here on this day February
7 26th, 1998, the time continuously recorded
8 on the videotape, at the offices of
9 Wachtell Lipton Rosen & Katz, 51 West 52nd
10 Street, New York, New York, to take the
11 videotaped deposition of Arthur Golden in
12 the matter of Montgomery & Larmoyeux
13 versus Philip Morris, Inc. et al., in the
14 Circuit Court of the 15th Judicial
15 District in and for Palm Beach County,
16 Florida, Case No. CL 97-010357 AE.

17 Will counsel please introduce
18 themselves.

19 MR. LARMOYEUX: Chris Larmoyeux, on
20 behalf of the plaintiff.

21 MR. BURTON: Dal Burton, on behalf
22 of R.J. Reynolds Tobacco Company and the
23 witness.

24 MR. KOLB: Dan Kolb, on behalf of
25 the witness.

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MR. BHATIA: Vineet Bhatia, on
behalf of Philip Morris.

MR. IANNO: Joe Ianno on behalf of
Philip Morris, Incorporated and R.J.
Reynolds Tobacco Company.

MR. ERIKSEN: Mike Maher's counsel
is Mike Eriksen.

MR. MAHER: Mike Maher.

MS. TUCKER: Kim Tucker on behalf of
the State of Florida.

MR. PETERS: Jim Peters, same.

THE VIDEOGRAPHER: Please swear the
witness.

ARTHUR F. GOLDEN, residing at

[DELETED]

having been duly sworn by the Notary
Public, was examined and testified as
follows:

EXAMINATION

BY MR. LARMOYEUX:

Q. Would you state your full name,
please?

A. Arthur F. Golden.

Q. Your profession or occupation?

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A. I'm a lawyer.

Q. Where do you work?

A. I'm a partner at Davis Polk & Wardwell.

Q. You have been provided to us today by way of a designation in the case of Montgomery & Larmoyeux versus Philip Morris et al. as the person with the most knowledge with regard to settlement discussions in the matter of State of Florida versus American Tobacco Company, et al. which occurred at the State of Florida at any time between the dates of August 1st, 1997 until August 25th, 1997.

To the best of your knowledge are you the person with the most knowledge on behalf of RJR?

A. Yes, I think so.

Q. Back in July/August 1997, what was your authority to bind R.J. Reynolds Tobacco Company involving any settlement involving the tobacco litigation in the State of Florida?

A. I'm a lawyer and I represented them in these negotiations so I negotiated on their behalf. As the negotiations progressed,

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reported to them and acted on the authority that was given to me from time to time.

So I didn't have any blanket authority to bind them but I got authority as time went on.

Q. Who did you contact in order to obtain authority on behalf of RJR?

A. Well, it varied. Generally I talked from time to time to Mr. Donahue. I might have talked to Mr. Blix. I also talked to Mr. Sharp, who was the general counsel at the parent company, the shareholder. It was not necessarily the same person all the time.

Q. How was it that you and Mr. Koplow became the lead negotiators for the tobacco defendants in the Florida case?

A. I think we were asked to do it by the companies. We were the lead negotiators for the June 20th resolution. I know we were asked to do it but for the companies.

MR. LARMOYEUX: Let me get this marked if I could, please. Exhibit No. 1 to this deposition.

(Plaintiff's Exhibit 1, affidavit of

1 Golden - Tape No. 1

2 Arthur Golden, was marked for
3 identification.)

4 Q. I want to show you what has been
5 marked as Exhibit No. 1 to your deposition, ask
6 if you are familiar with that document?

7 A. I've seen the affidavit. I'm not
8 sure if I've ever seen the cover to it.

9 Q. Looking within the context of the
10 filing, do you see the affidavit?

11 A. Yes.

12 Q. Is that your signature to the
13 affidavit?

14 A. Yes.

15 Q. It is notarized as being sworn to
16 under oath.

17 A. Is that a statement or a question?

18 Q. Yes. Was it notarized?

19 A. It was notarized.

20 Q. Did you prepare the affidavit or did
21 someone prepare it for you?

22 A. I don't remember if I wrote it out
23 myself originally or not. I certainly probably
24 wrote most of it or edited it, but I don't
25 remember if I wrote the first version of it or

1 Golden - Tape No. 1

2 not. I probably wrote most of it.

3 Q. With regard to paragraph 3, I'd ask
4 for you to read that paragraph and tell me
5 whether or not you drafted that paragraph or was
6 it drafted for you?

7 A. I can't remember if I was the
8 original drafts person for the whole thing but I
9 certainly was involved in writing it. I might
10 have written it, I just don't remember.

11 Q. Did you consider paragraph 3 to be
12 truthful when you signed it?

13 A. Certainly.

14 Q. I want to read portions of paragraph
15 3 to you. It says "Section 5 of the settlement
16 agreement," that was the settlement agreement
17 that was executed and provided to Judge Cohen in
18 this case, in the tobacco case?

19 A. Yes.

20 Q. It said that "the arbitration
21 process for the payment of fees by the settling
22 defendant does not and was not intended to
23 reflect the entire agreement of the parties as
24 to the procedures and conditions that would
25 govern the arbitration fees."

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2 Were you present when Judge Cohen
3 came to the Attorney General's Office on Sunday
4 night?

5 A. Yes.

6 Q. Were you present when Judge Cohen
7 made an inquiry as to how attorneys' fees were
8 going to be handled?

9 A. I was present. We had a status
10 conference Sunday night in the Attorney
11 General's Office and I was present for the whole
12 thing.

13 I don't remember much discussion
14 about attorneys' fees.

15 Q. Do you have any recollection at all
16 of the sitting judge making an inquiry as to how
17 attorneys' fees were going to be handled?

18 A. The only thing I remember is that I
19 think there was some comment, and I don't
20 remember if it came from the judge or if
21 Attorney General Butterworth mentioned that
22 there would be a provision in the settlement
23 agreement governing attorneys' fees assuming we
24 reached a settlement.

25 Q. Now, at the time the judge was

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there, you specifically intended that the settlement agreement did not include all the material terms as far as what would be governing the parties with respect to this proposed arbitration, correct?

A. At the time the judge was there, we intended and told him that the settlement agreement would not cover all of the material terms and provisions on several fronts.

Q. Did you, that is Arthur Golden, tell Judge Cohen that the settlement agreement did not and was not intended to reflect the entire agreement of the parties as to the procedures and conditions that would govern any arbitration of fees?

A. I told Judge Cohen that the settlement agreement was not and could not be complete as to all of the important items because of the time and that we just hasn't finished.

I wanted to make sure that he understood that, that we were going to work through the night to try and finish but that there were some points we hadn't reached

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agreement yet and there were some points we just couldn't cover.

The example I used with him to make sure he understood was the one I considered to be most important and that was the example of the escrow agreement, and that was unless we had a mutually satisfactory escrow agreement which was not going to take -- the negotiations hadn't even started yet, these payments were never going to be made.

So I made it clear to him that we were not going to be completely finished tomorrow but that what we would have, and it seemed to me that he clearly understood it, what we would have was an agreement which covered all the basic points but there was going to be work left to be done.

Q. Let's talk about strictly the issue of attorneys' fees. Did you tell Judge Cohen that the settlement agreement did not and was not intended to reflect the entire agreement of the parties as to the procedures and conditions that would govern any arbitration of fees?

A. I don't remember if we discussed

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that or not.

Q. The only parties to the settlement agreement was the State of Florida and the tobacco defendants?

A. That's my understanding.

Q. Was there ever any effort or suggestion that the private lawyers for the State of Florida be made a party to that agreement?

A. Not by us.

Q. Who made that suggestion?

A. I don't know of anybody. I'm just saying we did not. I don't know if anybody did.

Q. Was that ever discussed, that the private lawyers should be made parties to the agreement?

A. Not in my presence.

Q. Are the private lawyers third-party beneficiaries of the agreement in your opinion?

MR. BURTON: Object to the form.

A. No, we didn't intend any third-party beneficiaries to the agreement. We intend the agreement only to set forth the obligations that we were undertaking.

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Q. Between the State of Florida and the tobacco industry?

A. That's right. We were undertaking certain obligations pursuant to the agreement and those were set out.

Q. In fact, did you tell Judge Cohen as it relates to attorneys' fees that the settling defendants would not have entered into these settlement agreement without having reached a clear and satisfactory agreement as to such essential terms including the timing of the arbitration process?

A. We didn't discuss that with Judge Cohen.

Q. Was the Attorney General's Office well aware of the industry's concern about the timing of the arbitration process?

A. Yes.

Q. Did you advise the Attorney General's Office that it was the tobacco industry's intent that there would be no resolution of the fee issue until either the proposed national resolution was dead or alive or November 15th, 1998?

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A. Yes.

Q. Whom in the Attorney General's Office did you make that statement to?

A. I don't remember specifically because I can't really place it at a specific meeting. So it could have been Attorney General Butterworth, it could have been Mr. Lewis, Harold Lewis. I'm just thinking of the people who were at the meetings. Mr. Rice was certainly at some or most of the meetings. I think Mike Maher was at the meeting I'm thinking of, and Parker Thompson was at some of the meetings. I don't know if he was at all of them. Kim Tucker may have been at some of the meetings.

Our position was clear. I can't specifically tell you to whom we said it when but it was clear.

Q. For the Attorney General's Office to take the position that they had no knowledge that the industry was insisting on arbitration not occurring prior to either the death or the passage of the proposed national resolution or November 15th, 1998 would not be accurate. Is

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that a correct statement, sir?

A. That would be a mistake. That would not be correct.

Q. Clearly that was known to the state representatives?

A. As far as I know it was.

Q. You didn't keep it a secret?

A. No, absolutely not.

Q. That was always, that was one of the essential terms was timing?

A. Yeah. It was an important term to us.

Q. The reason it was important was for what, sir?

A. Well, there is several reasons. The main reason for us, I'm just trying to reconstruct.

We had a system that we were trying to put in place nationally, not just for Florida, where we recognize that the defendants, the tobacco companies were going to wind up paying attorneys' fees and we had proposed a system which we were determined to implement that our responsibility to pay fees would be

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1 limited to \$500 million a year in total
2 throughout the country. We didn't know and were
3 not going to try to judge who was entitled to
4 share in that. We had just determined that it
5 not be more than that.
6

7 We were also determined to have a
8 process of setting those fees that did not
9 involve the companies in order to make sure the
10 process was deemed to be as fair and above board
11 as possible. So we were going to divorce
12 ourselves from a role in negotiating those
13 fees. And again, that doesn't apply just to
14 Florida, it applies overall. That's been our
15 continuing position.

16 In that regard, we wanted that to
17 apply to Florida. We also wanted the fees to be
18 set after the proposed resolution. This gets to
19 your point about timing had been acted on one
20 way or the other because when you deal with the
21 \$500 million, we were concerned that all of the
22 lawyers who have or who will be judged to have a
23 claim on part of that \$500 million get to share
24 in it. Which means to me that it has to be done
25 closer to the end of the year or after a time

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when everybody knows they can apply so you don't have a situation where the first person comes in and takes too much of it and there is not enough left to share rateably with the others.

That was our position all along. It applies to Florida but it wasn't developed specifically with reference to Florida.

Q. Was there ever any concern that RJR expressed that the payment of attorneys' fees could affect the ability of the industry to obtain favorable treatment of a proposed national settlement?

A. Well, the answer to that is yes and no, and I'll explain it if you'd like.

Q. You have an absolute right once you answer the question to explain it any way you wish.

A. All one has to do is read the papers and see how lawyers rightly or wrongly are criticized for lots of things, not the least of which are the fees that they earn. As we were negotiating, and again this predates the Florida settlement, as we were negotiating the proposed resolution and one could see the sums of money

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1 that were going to be involved, it was obvious
2 that no matter what the fee levels were going to
3 be, whether it was a percentage that would make
4 a lawyer who was obtaining it happy or sad, we
5 were still talking about a very very large
6 amount of money.
7

8 So we did have that concern in the
9 abstract but we also recognized that we were
10 going to be paying very large amounts of money.
11 So we passed that concern and we recognized that
12 we were going to be paying large amounts of
13 money.

14 Then we got to the issue -- this was
15 all communicated -- I'm not giving you our
16 internal thinking because that's privileged.

17 Q. Obviously.

18 A. This was communicated to the other
19 side during these negotiations about the \$500
20 million was what we felt we could stand
21 economically to pay, to commit to pay in any one
22 year. And then the rest of the discussions were
23 about how do you arrange to have it allocated in
24 a fair way, because as I said we didn't even
25 know who all the attorneys were who would be

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coming in and saying they were entitled to a piece of this.

Q. When did you become aware for the first time that there was a contingency agreement with the Florida lawyers? For the payment of fees, obviously.

A. I knew they had an agreement for the payment of fees -- I heard they had an agreement. I don't think I've ever seen it. I don't remember when. It was before, you know, before the settlement but I don't remember when.

Q. In paragraph 4 you make note that the parties, and I assume you're referring to the State of Florida, correct, because they're the only parties to the settlement agreement?

A. The tobacco companies and the State of Florida are the only parties.

Q. It was the parties, and I assume you're referring to the State of Florida, intended that the essential terms of their agreement as to the fee arbitration process that were not contained in the settlement agreement including terms as to timing of any such arbitration would be reflected in a side letter

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agreement.

When was that discussed with the State of Florida?

A. I don't remember. It was obviously sometime before the final settlement negotiations because it had been discussed before, but I can't give you a specific date.

Q. Using the timing of when Judge Cohen arrived to the Attorney General's Office that evening, was it clear in your mind that the State of Florida, that is the Attorney General's Office knew that side letter agreements needed to be executed?

A. Yes.

Q. Was there ever any objection by the Attorney General that side letter agreements would be necessary?

A. No. At least not to me.

Q. How about you had dealings with Kim Tucker?

A. No. Nobody objected.

Q. Did you have dealings with Kim Tucker?

A. Some.

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Q. At any time did Kim Tucker ever tell you that there were no side letter agreements that would be honored by the State?

A. No, no, no, absolutely not. When I said no, I meant nobody for the state. I wasn't just confining it to the Attorney General and Butterworth.

Q. Did you have an understanding that Joe Rice could bind the State of Florida to any agreements?

A. My understanding was, and we were specifically told that the State of Florida would not sign an agreement. First of all, Joe Rice did not sign the agreement for the State of Florida. And we all agreed in these negotiations, because they were fast paced, that there was no binding deal until people actually signed the document. So in terms of binding anybody, it was when we signed and that understanding was clear.

Q. Well, who did you anticipate --

A. Let me finish. I wasn't quite finished.

Q. I'm sorry.

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1
2 A. But then we were also told that the
3 decision about whether Florida was going to sign
4 an agreement, I'm sure after advice but was
5 going to be made by the governor.

6 Q. Who did you anticipate would sign
7 these side letter agreements?

8 A. I think we anticipated that Joe Rice
9 with the permission of the State of Florida
10 would sign the side letter agreement. If as we
11 were preparing the drafts someone had said to us
12 it's not supposed to be Joe Rice it's supposed
13 to be Attorney General Butterworth or somebody
14 else, it wouldn't have mattered to us.

15 Q. At any time did the Attorney General
16 tell you that any side agreements had to be
17 cleared through him personally as opposed to Joe
18 Rice?

19 A. No. We sent them to Joe Rice
20 because that's who we were exchanging drafts
21 with and we were never asked to send them any
22 other way.

23 Q. Who told you to send them to Joe
24 Rice?

25 A. I think that's just the

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understanding we had when during the negotiations, and clearly the other people for the State of Florida knew, knew that we were sending them to Joe Rice. But I think we just agreed that we would exchange the drafts, that Joe Rice and I would exchange drafts and that he would serve as the point person for his side to gather whatever comments he needed to gather and consult with whomever he needed to consult with.

Q. You had no intention of entering into any side agreements with the private lawyers, correct?

A. We never considered that one way or the other.

Q. You were only going to enter into agreements with the State of Florida?

A. State of Florida, right.

Q. And that any side agreement was to be entered into between the tobacco industry and the State of Florida, not private lawyers?

A. The side agreement was really, the specified letter was really to reflect additional parts of the settlement agreement. So I regarded it as part of the agreement for

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the State of Florida.

Q. You didn't think on behalf of RJR you were out there negotiating with the private trial team, did you?

A. Oh, no.

Q. You thought you were negotiating with the State of Florida?

A. The only party to the agreement on the other side was the State of Florida and that's who we were negotiating with.

Q. It says "To this end, drafts" -- in the same paragraph. "To this end, drafts of the side letter agreement were exchanged prior to and after the date of the settlement agreement and a final side letter agreement was executed by me on behalf of the settling defendants after the date of the settlement agreement. A draft of the side letter agreement proposed by Joe Rice, one of the principal negotiators for the State of Florida is attached hereto as Exhibit A."

Who told you Mr. Rice was one of the principal negotiators?

A. Well, first it was obvious because he was one of the principal negotiators. When

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we sat in the room, I can't recall if he was at every meeting but I think he was and he certainly was, if not the leading spokesman in the negotiations for the State of Florida, a leading spokesman for the negotiations for the State of Florida, and the Attorney General was at most of the meetings. That's my conclusion. I don't remember if anybody said that. Nobody said anything inconsistent with that.

Q. Was it anticipated by you on behalf of RJR that the judge at the time of accepting and ordering a binding settlement would be told that additional side letter agreements needed to be drafted in order to complete the transaction?

A. The judge was told that additional papers needed to be drafted.

Q. Was he ever told that additional agreements needed to be drafted?

A. Yes.

Q. Additional side deals?

A. Additional agreements. The escrow agreement is a side deal too, if you want to call it that.

But the answer is yes. I

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specifically told the judge that Sunday night myself because I wanted to make sure he understood that we didn't -- we just couldn't have a completed package by Monday morning and I wanted to make sure he understood that.

Q. At the time of the signing ceremony in open court where he entered an order, at any time did you or anyone on behalf of RJR stand up and tell the judge "By the way, what you're signing there does not encompass all of the agreements that we have reached with respect to this transaction"?

A. I don't think I told the judge anything. After Sunday night at that status conference at the Attorney General's Office was I think the only time we discussed any substance with the judge. The signing ceremony in court was really just that. It was a ceremony for the governor's public relations purposes because we'd already signed the agreement and the signing ceremony was just to do it in front of the cameras.

Q. When was the signing ceremony?

A. The actual signing took place Monday

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morning probably I would guess half hour before we got to the courthouse. We signed a whole bunch of copies so that there would be originals for each of the defendants and for the state and for various other people. And we signed it at the hotel which were your headquarters, the plaintiffs' headquarters.

Q. The Brazilian Court?

A. Yes.

Q. Certainly what was being done in the courtroom was what perceived to be for the governor's personal --

A. It was a signing ceremony. The governor wanted to have a public signing ceremony. That's why it was done in court. The agreement had already been signed. I think ten copies.

Q. That's nothing tobacco was interested in, this public signing?

A. Signing in court?

Q. Yes.

A. No. We didn't care one way or the other. In fact, I didn't know we were going to do that in court until we got to court. It was

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just an accommodation. The governor wanted to have a signing in court and we did it.

Q. That's something you on behalf of RJR insisted we sign it in front of the judge so he could order it on the record?

A. No. I didn't insist signing it in front of the judge. I don't think signing it in front of the judge has anything to do with him entering an order. As far as I know you can give him a signed contract and he can decide whether or not to enter an order.

Q. Who prepared the order?

A. I think my memory is that, and it's going to be a little foggy because we were up almost all night Sunday night. Monday morning when we got to the Brazilian Court, somebody, I think it was Kim Tucker, started working on simple motion papers and a simple order to submit to the court with the contract and I think Mr. Gentry was very helpful in just getting the order into a form that was satisfactory to everybody. I think that's right.

Q. It goes on now. There was a

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proposed side letter agreement by Mr. Rice that was dated August the 25th, according to your affidavit.

A. Right.

Q. Was that rejected by tobacco?

A. Well, you could say that. I wouldn't sign his version of it.

Q. Why was that?

A. Well, what Mr. Rice did was he took most of the things we had been talking about and I think most of the language that I had been sending him and put it on his letterhead and sent it back to us to get us to understand it -- I'm sorry, get us to sign it as a memorandum of understanding. I was unwilling to sign his version because there was at least one difference that troubled me, and so I said we wouldn't sign it and we went back to using our drafts.

It might have been everybody likes their own drafting but since we were paying the money I thought we were entitled to do the drafting. But there was also a substantive point in his draft that was unacceptable to me.

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Q. What was that?

A. The very beginning he says defendants maintain that they will make annual payments of up to \$500 million per year. Now Mr. Rice had always been trying to negotiate a higher level of annual payments than the \$500 million. He wanted the annual cap amount to be set at a higher level. And we were not willing to do that.

This letter was not acceptable to me. We were going to agree to pay up to a certain amount. We were not going to simply volunteer to pay a certain amount with no agreement on the other side's part.

Q. Well, has the State of Florida ever indicated to you that they agreed to a cap on payments? Do you have a letter signed by an official of the State of Florida that says we agree that there is a cap of \$500 million?

A. Per year on attorneys' fees?

Q. Yes.

A. Well, this letter has never been signed.

Q. That's what I'm asking you. The

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only --

A. This agreement, this part of the agreement has never been finalized.

Q. The only party that can authorize that is the State of Florida, correct?

A. You'll have to ask the State of Florida that. This letter has never been signed by or for the State of Florida.

Q. As we sit here today, there is no agreement with the State of Florida that caps your exposure on fees by the State of Florida of \$500 million a year, correct?

A. No, I don't agree with that.

Q. Do you have a written document?

A. The written document has never been signed but we had an oral agreement with the terms clearly set out.

Q. With whom? Who did you have an oral agreement with?

A. With the State of Florida's representatives.

Q. Who?

A. With Mr. Rice, I'm sure the Attorney General knew about it. Mr. Thompson certainly

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knew about it because he was present at the ultimate discussions on Sunday night the 24th, was it. I don't know who else.

Q. Not know about it. I want to know who has told you that the State of Florida agreed --

A. I've already answered your question.

Q. Please listen to my question. You said they knew about it. That was the position of the industry. But had the Attorney General of the State of Florida said "Mr. Golden, on behalf of the State of Florida I agree that you're entitled to cap your attorneys' fees exposure in Florida to \$500 million a year"?

A. The Attorney General of the State of Florida was present for the negotiations. During the negotiations we told them very clearly what we were willing to do in all areas. Asked about the escrow agent, what type of agent it had to be, what we were willing to do in fees.

We would not have signed and made it clear to them that that was what we were willing to do. They accepted that and signed this

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agreement. There is not a separate piece of paper that has the details that were not in the main agreement of the attorneys' fees but they know full well our position because they were present when we explained it.

Q. Well, the "they," I need to separate the "they."

A. The "they" consists of lawyers for the State of Florida and principals for the State of Florida, although I don't know if you consider the Attorney General a lawyer or a principal.

Q. Well, is it your position that the Attorney General's Office prior to the signing ceremony in court agreed to cap your exposure for attorneys' fees in Florida as part of an overall cap of \$500 million a year?

A. They agreed to accept our position on attorneys' fees.

Q. That is the Attorney General's Office?

A. Yes.

Q. And did the governor ever tell you that it was his position that the payment of

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attorneys' fees in Florida was capped as part of an overall cap for all attorneys in the country at \$500 million a year?

A. I never discussed that with the governor.

Q. The only individuals you discussed it with were people from the Attorney General's staff, Mr. Rice, Mr. Maher?

A. I think Mr. Maher was there for the discussions. I don't remember specifically.

Q. Have you ever spoken to the Attorney General's Office and said "Why won't you sign what you said you agreed to"?

A. I have spoken to Mr. Rice about it, with whom we were having these negotiations.

Q. My question to you --

A. Mr. Rice told me he couldn't sign it because he was not authorized to sign it at the time we wanted him to sign it.

Q. Having Mr. Rice tell you that he wasn't authorized?

A. At the time, at the time we wanted him to sign it because, and the reason for it was this dispute among the lawyers in Florida

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had broken out.

Q. My question to you: Have you ever asked anyone from the Attorney General's Office to sign an agreement that capped payments at \$500 million a year?

A. The answer is yes. When we sent this letter out we expected it to be signed. It was not signed.

Q. Other than Mr. Rice, have you ever asked anyone else from the Attorney General's Office to sign a letter capping Florida fee exposures?

A. No. I sent it to Mr. Rice because we were dealing with Mr. Rice and I assume Mr. Rice distributed to his clients and co-counsel.

Q. Has anyone from the Attorney General's Office told you that that was not the deal, that they never agreed to cap attorneys' fees at \$500 million?

A. No.

Q. You also make reference here that there is a side letter -- the final side letter agreement is attached hereto as Exhibit B. The

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draft and final version of the side letter agreement describes aspects of the arbitration process that were regarded by the settling defendants as essential terms of their agreement at the time they entered into the settlement agreement.

Now let's go over to Exhibit B.

A. All right.

Q. It says at the top, "Dear Joe, August 29th, 1997. I am writing on behalf of the settling defendants to confirm the details of the understanding you, Meyer Kaplow, reached prior to entering into the settlement agreement in the above litigation with respect to providing for the payment of fees for the State of Florida's private counsel in accordance with paragraph 5 of the settlement agreement."

Do you see that statement?

A. Yes.

Q. Now, this is your letter, correct?

A. That's right.

Q. Is that true? Let me back up for just a minute.

When you say prior to entering into

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the settlement agreement, what is your timing?

A. Well, we entered into the settlement agreement on Monday morning, August 25th.

Q. Do you remember when the ceremony was signed over in the Brazilian Court?

A. When we signed the document.

Q. Over in the Brazilian Court or in front of Judge Cohen?

A. Well, when we first signed the document.

Q. That's when you considered that all essential terms had been agreed to?

A. I think that's probably a good way of putting it. I think we had agreed to the essential terms and we were continuing to add certain details but we had agreed to the essential terms, I think that's right.

Q. Now, do you have page 2 in front of you in that affidavit?

A. There doesn't seem to be a page 2. There are two page 3s, but there doesn't seem to be a page 2.

Q. The page 2, for some reason when it was copied it was copied out, but page 2, I want

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to ask, there is an Exhibit No. 2 to Mr. Koplow's deposition that makes reference to the same letter. I believe it's signed by yourself.

A. Okay.

Q. The page 2, would you read that into the record, please?

A. The whole page?

Q. No, just the first paragraph, I'm sorry.

A. It's a carryover paragraph.

Q. Would you start at the bottom and then read the first full paragraph?

A. You want the first full paragraph?

Q. First full paragraph.

A. "The panel shall consider all relevant matters in reaching a decision that fairly provides for full reasonable compensation to the attorneys for their representation of Florida in the tobacco litigation. If the proposed resolution or a substantially equivalent federal program is enacted, the panel shall also consider the contributions towards the legislation.

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2 Q. Would you continue with the first
3 paragraph?

4 A. The carryover paragraph?

5 Q. The carryover paragraph.

6 A. Do you want me to start in the
7 middle of the sentence?

8 Q. Yes. Just start in the middle of
9 the sentence if you would, please.

10 A. "Proceeding before the panel after
11 Congress and the President act on the June 20th,
12 1997 proposed resolution or November 15, 1998
13 whichever is earlier."

14 Q. Now that was the agreement that you
15 said that the state was well aware of that they
16 were not going to go to arbitration until after
17 some enactment or some action on the proposed
18 resolution or November 15th, correct?

19 A. That's right.

20 Q. Read the next sentence if you would,
21 please.

22 A. "Any of Florida's private counsel
23 may choose to participate in this process in
24 lieu of any fees or requests for fees for
25 services provided to the State of Florida from

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any other source."

Q. That's not true, is it? That was never agreed to by the State of Florida?

A. Well, it is true. That was put in at the request of the State of Florida communicated to us by Mr. Rice.

Q. When was that communicated to you, prior to entering into --

A. Sometime during the week of August 25th to August 29th.

Q. Now, your letter says "I'm writing on behalf of the settling defendants to confirm the details of the understanding you, Meyer Koplow and I reached prior to entering into the settlement agreement."

Now, there was never any agreement on lawyers opting in or out prior to the execution of the settlement agreement, correct?

A. That's right.

Q. This was a discussion that you had with Mr. Rice on behalf of the State of Florida after there had been an order of the court entered, correct?

A. That's right. This was an attempt

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to provide alternatives and choices to private counsel when the dispute among them arose or at least when we became aware of it, which was not until after August 25th. In fact, I'm pretty sure it was sometime after it in that week.

Q. Did you consider the opting in or opting out an aspect of the arbitration process that was regarded by the settling defendant as an essential term of their agreement at the time they entered into the settlement agreement?

A. We never considered this at the time we entered into it because it was our understanding that counsel for the State of Florida had accepted the fee proposals we had made and were willing to provide. That was our understanding.

So this was not considered one way or the other. As I said, this just came up afterwards when the dispute arose and we became aware of it. This was put in at the request of I think it was Mr. Rice to provide an opportunity so that if all the lawyers for the State of Florida could not reach a uniform decision which we had never anticipated so that

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2 the individuals could decide what to do and go
3 their separate routes.

4 Q. Did he tell you he had authority
5 from the State of Florida to enter into that
6 agreement with you?

7 A. We were trying to take this
8 agreement and add or change terms, not
9 consequential terms from our point of view but
10 terms that would make it acceptable to the
11 lawyers if that could be done. As I said, we
12 were not aware that there was any dispute until
13 after Monday.

14 Q. That's not what your letter says.
15 Your letter says "I am writing on behalf of the
16 settling defendants to confirm the details of
17 the understanding you, Meyer Koplow and I
18 reached prior to entering into the settlement
19 agreement." That's what your letter says.

20 A. That's right.

21 MR. ERIKSEN: Let me object to the
22 form of the question and move to strike
23 the answer.

24 Q. Prior to entering into the
25 settlement agreement, Mr. Rice and Mr. Maher had

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never come to you and said "We want an opt in or opt out provision," correct?

A. That's right. But if you recall your earlier question you asked were you right that this letter meant that we had reached an agreement on all the essential terms. The answer is yes, we had. I didn't regard this as an essential term and we certainly wasn't within our contemplation at the time.

What this letter was and is it attempted to set out the basic agreement we had reached and then there was continuing discussion about the details and there was more work to be done. We were exchanging drafts and this is something we were willing to sign. The State of Florida never got there but we had. We took comments from them to make certain changes, not on key provisions, but on provisions to make sure that the terminology did what we expected it to do.

And also once the dispute arose among the lawyers and we became aware of it, we were quite open to modifying this in a way that did not affect our obligations or our

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2 involvement in this but in a way if there was
3 some way that we could modify this in a way that
4 would help resolve that dispute or not, either
5 make peace among the lawyers or give them some
6 opportunities to pursue their own courses, we
7 were willing to do that.

8 Q. Correct me if I'm wrong, but the
9 institution of that draft of the letter was
10 caused by Mr. Rice calling you up and saying "I
11 want this in the agreement"?

12 A. That particular clause I think, my
13 memory could be faulty but I think it came as a
14 result of a discussion and a request from
15 Mr. Rice.

16 Q. Did Mr. Maher contact you and tell
17 you he wanted it in there?

18 A. I don't recall ever speaking to Mike
19 Maher about this after Sunday evening. I could
20 be wrong but I don't recall ever speaking to him
21 about this after Sunday evening, the 24th.

22 Q. Did you at any time ever have any
23 discussions with anyone from the State of
24 Florida, the Attorney General's Office or the
25 Governor's Office that that provision was

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acceptable to them?

A. I was talking to Mr. Rice about this subject and as I said before, I assumed and it's been my experience that he briefs his client and his co-counsel. So I assume when I was speaking to him I was speaking to the Attorney General's Office.

Q. Did he ever get back in touch with you and tell you that that provision or your letter was unacceptable?

A. There came some point later and I can't remember what date, probably in the middle of September. It was not that the letter was unacceptable, but he said he was not going to be able to sign the letter.

What happened, rather than the better answer to your question I guess the more responsive answer is that as events continued to unfold, and by that I mean the dispute among the lawyers in Florida, we got differing requests for possible changes to the letter that might satisfy people. Some of them -- I don't remember all of them.

Some of them we said we couldn't do,

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2 some of them we probably said we could, but we
3 took them under advisement and then we had an
4 ongoing dialogue looking for a way to modify
5 this. Again not changing the substantive terms
6 from our point of view but if there was some way
7 to do this, that would make things better for
8 the lawyers and end their dispute, we were
9 willing to do it.

10 Q. At no time have you ever received
11 any signed letters from the State of Florida
12 indicating that there are any side letter
13 agreements with the tobacco industry with regard
14 to the arbitration of fees, correct?

15 A. No. There has never been a signed
16 document about the fees.

17 Q. At all?

18 A. Other than the settlement
19 agreement?

20 Q. Other than the settlement
21 agreement.

22 A. There has never been a signed
23 document that I can remember.

24 Q. There has been no amendments to that
25 agreement, correct?

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2 A. No.

3 Q. And there has been no modifications
4 to that agreement?

5 A. There have been no written
6 amendments or modifications to it and I can't
7 think of any oral ones either.

8 Q. As far as your August 29th, 1997
9 letter from RJR's perspective, did you consider
10 that to be binding on the industry?

11 MR. BURTON: When you say RJR I
12 assume you mean Reynolds Tobacco?

13 MR. LARMOYEUX: Reynolds Tobacco,
14 I'm sorry.

15 A. I signed this letter and was
16 authorized to sign this letter. So in that
17 sense it was something the industry was and I
18 think remains willing to do.

19 As I told you before, it was our
20 understanding throughout that nothing was
21 binding until both sides signed it. That was
22 always the understanding. So this is not
23 binding on anybody because it's never been
24 executed.

25 Q. So there is no binding side letter

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agreements with tobacco at this time?

A. The side letter written agreement has never been completed and executed by both sides. We signed it and we were prepared to live by it. I was authorized to sign it.

Q. Unless the State of Florida signs the letter of agreement, does tobacco intend to go back into court and ask for its money back out of the escrow since there has never been a signed agreement?

A. We'll find out.

Q. I mean --

A. I'm not going to disclose any litigation strategies to you.

Q. I understand.

A. I'm not going to disclose any litigation strategies.

DIR Q. In terms of this time, is it your position as the corporate representative for Reynolds Tobacco that there is no binding settlement agreement because there has never been a binding agreement on the side agreements?

MR. BURTON: Object to form and

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instruct the witness not to answer to the extent it would require the disclosure of privileged information or litigation strategy or negotiation strategy.

A. If Reynolds takes that position in court you'll know about it. I'm not going to disclose litigation strategy or discussions of litigation strategy.

Q. But in terms of your understanding at this time there has been you considered as you stated in your affidavit that the side deals were integral to the execution of the settlement that has been adopted by Judge Cohen, correct?

A. I don't know if those are the exact words I used in my affidavit or not but I certainly meant what I said in my affidavit.

Q. For example, you state the settling defendants would not have entered into the settlement agreement without having reached a clear and satisfactory agreement as to such essential terms including the timing of the arbitration process?

A. That's correct.

Q. There has been no agreement in

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writing between the State of Florida and the tobacco industry about the timing of the arbitration process, correct?

A. It is correct that a writing has never been signed. It is not correct that there has been no agreement. There was a very clear agreement and then the State of Florida never signed it, the memorialization of that. But there was a very clear agreement.

Q. In terms of how the arbitration process in terms of the caps would apply, is it your position that the State of Florida has in fact agreed to caps?

A. The State of Florida has agreed to the caps insofar as it relates to our obligation to pay fees.

This set forth what the defendants were willing to undertake as their obligation to pay fees. And it was negotiated.

Q. Is it your position other than the issue of opting in or opting out as far as the attorneys' fees that every other essential term or every other term of your August 29th, 1997 letter had been agreed to by the State of

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Florida prior to the execution of the settlement agreement from Judge Cohen?

A. I think that's correct. I think that's correct. Some of this had been discussed afterwards but I think the essential terms had certainly been agreed to.

Q. Tell me what terms in terms of your letter agreement that you proposed to Joe Rice, which terms had been agreed to with the State of Florida, not Joe Rice, with the State of Florida prior to the order adopting the settlement agreement in front of Judge Cohen.

A. Just let me tell you the way I answer your question is I don't separate the two. As a lawyer, and I'm sure you would know this, I don't deal with principals, I usually deal with the lawyer for the other side. I don't deal directly with the principal. If I'm representing a defendant I don't talk to the plaintiff. I talk to the plaintiff's lawyer, which I think ethically I'm supposed to do.

So when I'm talking to that lawyer, I'm talking to that party. So when I'm talking to Joe Rice, the only capacity I was talking to

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Joe Rice in which I was talking to Joe Rice was in his position as a representative of the State of Florida. That was clear to us both from his performance at the meetings and from his client.

So I don't distinguish between the two.

But in answer to your question, I think the language, I don't consider this an essential term but I think the language on page 2, and my memory is not perfect, but I think the language in the third paragraph up from the bottom "In considering the request for fees under the Florida settlement agreement," etcetera, "the panel shall award fees that fully but fairly compensate," etcetera, the rest of that paragraph.

Q. Yes.

A. I think that was added afterwards. I don't consider that to be a change in the basic agreement. I think this is an example of what I was talking about earlier that we had gotten continuing proposals to change this to make the lawyers more comfortable and I regarded

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this as being obvious and was willing to put it in. I didn't change our obligations.

Q. My question to you, and again up until the signing of the agreement and the adoption of that agreement by an order of the court, what terms in your letter did you understand had been agreed to by the State of Florida?

A. I think other than that sentence at the end of the carryover paragraph and the paragraph I just read which is more an amplification than a new significant term, I think everything else had been discussed and agreed to before then. Again I could be wrong about something but I'm pretty sure I'm right.

MR. LARMOYEUX: Let's mark this as the next numbered exhibit, please.

(Plaintiff's Exhibit 2, draft agreement, was marked for identification.)

Q. Do you recognize that agreement or that document?

A. Well, this is a copy, this is a copy of a draft we had I think sent to Joe Rice. I've seen this document in the last few days

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going over the files of materials that were produced to you. I can't remember although I may well have seen this specific document with these specific markings on it before. The answer is I may well have but I'm not 100 percent sure.

Q. Do you recognize whose handwritings those markings are?

A. None of it is mine. None of it is mine.

Q. Who --

A. I think, I'm not sure but I think that what I would call the more scraggly writing, that might be Mr. Rice's, but you'd have to ask him, I don't know.

Q. Let me ask you this. This writing says "We acknowledge there has been no agreement by you or your colleagues as the \$500 million per year cap."

A. Remember I think I mention before that Mr. Rice -- first of all, some of these comments do not relate to Florida. They relate to the negotiation for Mississippi which was ongoing simultaneously.

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2 Q. That's my question too. Those
3 discussions contained where it says we
4 recognize. I guess he's asking the industry to
5 recognize there has been no agreement on the
6 cap?

7 A. Mr. Rice represents his clients and
8 his co-counsel very well and very aggressively.
9 He had since May been trying to get the industry
10 to agree that the \$500 per year cap is too low.
11 He always wanted it to be higher. He never
12 stopped trying and we agreed in Florida and
13 Mississippi and now subsequently Texas that it's
14 \$500 million and that has been the industry's
15 consistent position.

16 So, but Mr. Rice never stops trying
17 to get that agreement changed. This was again a
18 proposal by him to do that but I'm not sure if
19 it related to Florida or Mississippi. You can
20 see in fact there is one place here where there
21 is a cross-out and it says Mississippi.

22 Q. At the top it says "revised Florida
23 letter"?

24 A. Right. Now there is one part of
25 this letter that definitely applies to Florida.

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2 Q. I'm going to get to that in a
3 minute. But in terms of the letter itself you
4 don't recognize whose handwriting it was where
5 there had been reference to the industry
6 acknowledging that there had been no agreement
7 on the \$500 million cap?

8 A. I think that's Joe Rice's. We
9 certainly never agreed to that. I think that's
10 Joe Rice's handwriting, but you'll have to ask
11 him. Certainly not mine.

12 Q. But in any event, do you know how
13 that particular revision got to your offices?
14 Was it faxed back to you?

15 A. I can tell you what typically
16 happened. I can't tell you about this specific
17 piece of paper. I can't even read the fax line
18 so that doesn't even suggest anything to me.
19 But typically Mr. Rice and we or Kim Tucker or
20 whoever we were dealing with would fax drafts
21 back and forth. So we'd send a draft and they'd
22 scribble on it and fax it back. Especially if
23 it was on our system, we would be likely to get
24 the draft back with some interlineations on it.

25 Q. So certainly based upon the timing

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of your letter that more likely than not, that those corrections or changes were made after the signing ceremony in court, correct?

A. After August 25th?

Q. Yes.

A. Well, this whole thing was after August 25th because I never wrote a draft of this letter until after August 25th.

Q. You had told him that on August 22nd, that you thought the early part of the following week you would be able to start working on the side letter agreements. Do you recall that?

A. I don't remember if I said the early part. I said we would try to get to it as soon as possible. I do know the 25th was a Monday and I know I went home and went to bed because I had been up all night the night before. I think we did start working on it that week. But I mean I don't remember which day and I don't remember specifically what I told Mr. Rice.

Q. Let me show you what has been previously marked as Plaintiff's Exhibit No. 1 to Mr. Koplow's deposition, which is a letter

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you wrote August 22nd.

If you look in the third paragraph where it suggested that you would not put any detail of the arbitration process in the settlement agreement. Whose idea was that?

A. That came from the other side.

Q. When you say other side?

A. Generally. Well, in this case the State of Florida and the other litigations that came from the plaintiffs. That almost always came from the plaintiffs.

Q. Take a look at the paragraph. Is it your position that it was the State of Florida that did not want detail in the settlement agreement as far as the arbitration process and attorneys' fees?

A. I think that's right.

Q. You make mention in this letter that "I will draft a letter to you" and then you have in parens "probably the beginning of next week outlining our understanding with respect to attorneys' fees"?

A. Right, it says that.

Q. So it was anticipated or did you

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2 tell the State of Florida that you would be
3 preparing those side letter agreements for the
4 State's approval after the execution of the
5 document and the adoption of an order by Judge
6 Cohen?

7 A. I communicated to the State of
8 Florida through Mr. Rice just as I sent him the
9 draft of a memorandum of understanding to
10 distribute. And told the State of Florida
11 exactly what this says. That we anticipated
12 that we would get to memorializing the agreement
13 on the parts that were not contained either in
14 the settlement document or anything else that
15 needed to be done next week because obviously
16 this August 22nd was a Friday. We were going to
17 meet with them on a Sunday to see if we could
18 get to a signed document.

19 We didn't know and it clearly wasn't
20 going to be before that, so that's when we were
21 going to start trying to memorialize any
22 documentation, create any documentation that
23 needed to be -- that remained to be created.

24 Q. You expected based upon your prior
25 work with Mr. Rice that he would notify the

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State of Florida?

A. Absolutely.

Q. That the State of Florida be well advised, the Attorney General's Office would be well advised that any side letter agreements would require to be adopted and agreed upon subsequent to any settlement in open court on Monday?

A. I always assumed that Mr. Rice advised his client of our discussions.

Q. Whose idea was it that it had to be done by Monday?

A. That the settlement had to be done by Monday?

Q. Yes.

A. That really came from the State more than from us. In fact, I think it came from the State. They wanted it done by Monday.

Q. Did anyone give you a reason?

A. Well, if they did, I don't remember it. I do remember thinking that that was not my preferred course of action. You'll notice what I sent out, what we sent out was a document which was a memorandum of understanding rather

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2 than a completed agreement because it was quite
3 clear to me that we couldn't complete all the
4 documentation by Monday.

5 Q. Were you ever told by anyone that
6 the sitting judge had stated on Friday the 22nd
7 that he would not accept a memorandum of
8 understanding?

9 A. I was told that by Attorney General
10 Butterworth. I did not believe that if we
11 explained to the judge how complicated it was to
12 get the documentation done, but that we could
13 get to an agreement in principle that he would
14 not accept it. But we never got the chance to
15 do that. Events just passed us by.

16 Q. Well, was it your insistence on
17 behalf of the industry that a deal be done by
18 Monday?

19 A. No. It was the State's insistence.

20 Q. Were you asking for the trial to be
21 continued until you could get the deal done
22 properly?

23 A. I don't remember. I don't think so,
24 but I don't remember. I don't think we were. I
25 don't think we were.

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2 Q. You knew that in order to cross the
3 Ts and dot the Is that it was going to take far
4 beyond Monday to accomplish all the final
5 settlement resolution, correct?

6 A. That was certainly the view that
7 I -- that was my belief and that was the view
8 and I communicated that belief to the other
9 side. And in fact it did take the escrow
10 agreement, which was crucial because we weren't
11 going to pay any money without escrow agreements
12 being in place, I think took another week or two
13 to finish.

14 Q. So you actually settled, you settled
15 the agreement in open court without having any
16 essential understanding of what the escrow
17 agreement would be?

18 A. Well, escrow agreements are very
19 similar from matter to matter. So we had a
20 general understanding but the escrow agreement
21 is so important that it had to be finished. In
22 fact the, I believe the settlement document
23 actually says that the payments will be made
24 pursuant to a mutually acceptable escrow
25 agreement which meant that we had to agree on

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2 it. We had to agree on who the bank would be.
3 We of course were willing to let the state
4 choose as long as they chose a bank that was
5 very well regarded and very trustworthy, and
6 that's exactly what I told Judge Cohen Sunday
7 night.

8 Q. Did you ever request from the
9 Attorney General that he slow the process down
10 so that you could complete the task?

11 A. I made my view clear that we would
12 be better off getting all of the documentation
13 done and signed before we announced the
14 settlement. The State was unwilling to do
15 that. The State wanted to have a deal done by
16 Monday and they insisted that it be not a
17 memorandum of understanding but a final
18 settlement agreement with obviously some more
19 documentation to come.

20 They just would not waver from that
21 and we gave in on that.

22 Q. No one ever gave you any reason as
23 to why it had to be done?

24 A. I'm not saying nobody did give me a
25 reason. There was a concern on both sides about

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2 leaks and it could be that the state was
3 concerned that they couldn't keep it out of the
4 newspapers any longer than that. There was
5 discussion of that but I don't remember the
6 reason. I never viewed -- I viewed their
7 position as a position that in the negotiation
8 process we gave into and had to give into. I
9 did not view it as a reasonably grounded
10 position but it's something we gave into that.

11 Q. But the State, you expressed your
12 concern to the State that there had to be
13 agreement subsequent to the open court agreement
14 that would solidify the arbitration process?

15 A. I never had that specific discussion
16 with them. The discussion is as I told you
17 before that there was more documentation that
18 had to be finished and I focus mainly on the
19 escrow agreement which frankly was much more
20 important to me.

21 Q. But in terms of who was working on
22 the arbitration aspect?

23 A. Well, we were doing all the
24 documentation. We were doing as much of it as
25 we could. Kim Tucker participated substantially

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in drafting or trying to put together the actual settlement agreement that was signed and we spent a lot of time fighting over the drafts about whose version would be used and, you know, about different provisions.

We took the lead in preparing an escrow agreement and then of course the State marked it up and negotiated it and it took quite a while.

Q. Did you believe that you had the consent of the State of Florida to delay the drafting of side letter agreements until after August the 25th?

A. The State of Florida clearly knew that we hadn't finished all the documentation. So the answer to that question -- it wasn't delaying it, we hadn't gotten to it because we couldn't get to it.

Q. Physically is it your belief that the State of Florida consent to the process that you asked for binding side letter agreements after the court adopted settlement?

A. The State of Florida, and they're advised by a lot of lawyers, some of whom are in

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this room, and I assume well advised, signed a settlement agreement that was negotiated as to every word and period. And that agreement clearly shows that there is documentation to come. The State of Florida consented to that arrangement because they signed the agreement.

Q. But those side agreements had to be agreed upon by the parties?

A. The substance of the side agreements had already been agreed upon. The side agreements had to memorialize the agreement and be signed.

Q. So as far as you were concerned as of Monday morning, all the essential terms of any side agreement other than what we discussed here today had been agreed to and signed off on by the State of Florida?

A. That's right. As far as I was concerned, by the time we got to the point of signing this we had reached complete agreement with them on what we were going to be obligated to do in terms of your subject payment of attorneys' fees.

Q. At any time were you ever told by

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Mr. Rice that he was restricted in his ability to negotiate side deals for the State of Florida?

A. I don't remember ever hearing that.

Q. At any time did the Attorney General's Office tell you that any side deals had to go through their office in order to have binding authority of the State?

A. The answer is no one ever said that. I always assumed it was going through their office. When I deal with a lawyer for a party especially someone when the leading officer of the client, the Attorney General is there for most of the negotiations, I just always assume that that lawyer is distributing copies to his client and co-counsel just as I do to mine.

Q. Prior to seven o'clock on August the 24th, did you on behalf of the tobacco industry ever tell Mr. Rice that in the event Florida paid its counsel under their fee contract that the tobacco industry would not reimburse the State under the arbitration process?

A. I don't think that subject ever came

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up.

Q. At any time have you --

A. Ask that question again.

Q. Certainly. At any time prior to seven o'clock on August the 24th, did you ever tell Mr. Rice that in the event Florida paid its lawyers under the contingency fee contract that the State of Florida would be ineligible for obtaining payments from the arbitration process?

A. We never discussed that. The only thing that we discussed that might be relevant to your question is you will notice as you go through the documents we produced to you that there are many, many drafts or several drafts that originate from the Florida side of this litigation in which it said that the defendants are going to be responsible for the State of Florida's fees. Period. All of them.

That was never the deal and we made it clear, but the discussion was relating to what we, the defendants, were willing to do. It was not related to what Florida might or might not do.

So the answer to your question is we

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1 never had that discussion. We did have the
2 discussion that this is what we've been talking
3 about, the arbitration process, the
4 participation and the \$500 million a year cap
5 fund. That was what the defendants were willing
6 to do in the way of paying more than the
7 settlement amount by paying an amount for fees
8 more than the settlement amount. That's the
9 discussion we had.
10

11 Q. But you never indicated to Mr. Rice
12 or the Attorney General that if they decided for
13 whatever reason to pay its lawyers that the
14 State would be ineligible to come to this
15 arbitration panel to attempt to obtain payment
16 back?

17 MR. BURTON: Is this never or as of
18 a specific time?

19 THE WITNESS: I think I understand
20 the question, Dal.

21 A. Actually quite the contrary. The
22 subject never came up at that time. It did come
23 up later.

24 Q. When you say later, would you give
25 me a time frame?

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2 A. I can't be perfectly exact but I'm
3 going to estimate that it's something like
4 September 10th to 15th. And we were asked that
5 if the State of Florida agreed to pay its
6 lawyers, whether in full or we never got to the
7 specifics or advanced money, would we be willing
8 to let the State of Florida stand in their shoes
9 in the arbitration process. The answer in
10 general was yes, that we would.

11 Again we were always willing to do
12 anything that did not affect our total
13 obligation and that would help resolve the
14 dispute among the lawyers which frankly we never
15 anticipated.

16 Q. So I take it from the tobacco
17 industry -- so correct me if I'm wrong. From
18 your perspective on behalf of the tobacco
19 industry as far as the arbitration process was
20 concerned, there were only two material terms:
21 Timing and cap?

22 A. And that the format be as we had
23 discussed with Mr. Rice and the others.

24 Q. Well, the format was simply you
25 pick, they pick?

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2 A. It turns out not to be that simple,
3 but basically you're right. But the important
4 thing was that when we started talking about the
5 State of Florida having the right to come to the
6 panel if they paid some or all of their
7 lawyers. The only thing that we insisted on was
8 that the panel would make a decision about what
9 those lawyers would be awarded just as it would
10 have if the lawyers came themselves and then the
11 State of Florida could get the share of that
12 award for any lawyers that it made. It could
13 not necessarily -- we were not going to agree
14 that the State of Florida had the right to get
15 the amount that it paid just because it paid it.

16 Q. Well, you were taking the position
17 that the industry was not going to take any
18 position as to the size of any award?

19 A. That's right.

20 Q. So presumably there would be no one
21 there objecting as to how much to award the
22 State of Florida or any other entity?

23 A. We were not going to object. In
24 fact, Mr. Koplow and I were going to be
25 generally supportive because we had a very high

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2 regard for the work that the lawyers -- the
3 lawyers that we knew and observed had done. But
4 we had partially to calm any fears that the
5 lawyers for the State of Florida had we said
6 specifically that we would not try to oppose any
7 fee requests.

8 We also said because we wanted to
9 make sure that we were not involved too directly
10 in the process that we wouldn't comment so we
11 wouldn't comment about a fee request or an award
12 potentially being too high. We wouldn't comment
13 being low. We wouldn't take any position on any
14 number. That was the position we took and still
15 adhere to with respect to requests by the
16 lawyers for fees.

17 If the State was going to take the
18 place of the lawyers, our position would be the
19 same as to what those lawyers were entitled to.
20 We were not going to agree and it's in these
21 drafts that were exchanged we were not going to
22 agree in effect the State would decide what to
23 pay the lawyers and we would automatically
24 become responsible for it. In other words, we
25 wanted the process to be the same as it would

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have been but if the State paid some of its lawyers it could succeed to the share of the award that those lawyers would get.

Q. There would be no prohibition on the state asking for the amount of money it had paid, correct?

A. We never finished negotiating that, but I think where we were headed was that the State -- it was not going to be the State asking for the money, it was going to be the lawyers getting an award for the work they had done based on what the panel thought they were entitled to and the State would get the share of any lawyers that it had paid.

Q. Was it your understanding that individual lawyers or law firms would go seek the award on behalf of the State of Florida or that the entire State of Florida's legal fees would be decided at one time?

A. We hadn't finished that. I think it was the understanding that the entire group of fees would be decided at one time. But for example, it is not at all -- it was not and is not clear to me that the only lawyers -- I don't

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know that I know all of the lawyers who can seek a fee. There have been other surprises in this case for me.

So that people can go to the panel and apply based on the services they've performed and try and justify them. It's up to the panel to decide.

As we were negotiating this, and as you can see from the drafts that have been produced to you, we said that the State of Florida could stand in the shoes of its lawyers but we were not -- we wanted to protect ourselves so as not to give the State of Florida the right to decide how much we had to pay.

It was still going to be this panel and it was going to be based on the panel's assessment of the work that the lawyers had done and the value they had brought and the risks they had taken. All of the factors that you would present as a lawyer seeking fees. The panel would make the decision and the State would be able to get reimbursed for the amounts it had paid to the lawyers from their share of that award.

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2 Q. Well, under your letter agreement,
3 did it not say that the panel could take into
4 consideration any matters?

5 A. That's right. But that changed.
6 That's right, but that was before this request
7 came up. You will notice that the amendment we
8 drafted which was never incorporated but the
9 amendment we were trying to work out said that
10 when the State got the right to participate in
11 lieu of its lawyers, if they had paid those
12 lawyers, that the panel would not consider what
13 the state had paid the lawyers as being -- I
14 believe the language says as being a relevant
15 criterion. The panel might award more, it might
16 award less but it was not going to -- the panel
17 was to do its work and consider anything it
18 wanted to in determining what the lawyers were
19 entitled to.

20 What the state decided to pay the
21 lawyers was not a relevant factor. We were not
22 willing to give the state the right to determine
23 how much we were going to pay.

24 Q. So your position was that the state
25 had no right to pay its lawyers and then go to

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the panel and say "We've paid \$2.35, we're entitled to it back"?

A. No. My position is that the state was entitled to pay its lawyers, is entitled to pay its lawyers, always was; and that if they do that, we've committed to pay fees pursuant to a certain process. That process should be followed and if they are to pay Lawyer One \$2.35, then after the award, if Lawyer One's share is \$2.35 or more, the state can get up to the \$2.35.

Q. But your position is that the panel could not be told that the State of Florida had paid lawyer fees?

A. Well, let me find my position so I can make sure it's accurate. We actually had some negotiations about this but it was not finished. It's on Exhibit 2, the last page. I don't know if this is the last version of this or not, but we clearly said the State of Florida shall be entitled to receive out of the amount awarded by the panel for Florida's counsel that portion of the award that corresponds to the portion which counsel has received payment would

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1 have received out of the amount awarded.

2
3 There is another iteration of this.
4 We wanted to protect ourselves against the state
5 simply saying "Well, we've just paid the lawyers
6 a certain amount of money and we're
7 automatically entitled to get that money back,"
8 because that was not the agreement we had. We
9 were willing to leave our fate into the hands of
10 this panel to decide what was full and fair
11 compensation for the lawyers.

12 We were not willing to let the State
13 preempt the process by saying we've paid this
14 amount that determines it.

15 Q. But the point being is it's your
16 position --

17 A. I'd have to see the language. You
18 have it some place but I don't have it in front
19 of me.

20 Q. Again, just trying to understanding
21 the position since first of all it was never
22 contemplated before the signing ceremony on
23 Monday that the State of Florida would pay its
24 lawyers, correct?

25 A. We didn't contemplate it one way or

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the other. This came up, this whole issue came up. Again, as I said before, that was an attempt to try and accommodate the participants in this dispute so that they could work out something that would satisfy them and yet not change our obligations.

Q. At no time did you ever tell Joe Rice that if the state were to pay its lawyers and I'm talking about prior to Judge Cohen entering his order, that if, if the State of Florida paid its lawyers that the State of Florida would not be eligible to attempt to get its money back from the arbitration panel?

A. That's right.

Q. That never happened?

A. No, no.

Q. Because there was never any discussion?

A. No. Other than what I've already told you there were no other discussions that I can think of. This issue did not come up until later and it came up as a potential solution to the dispute that was going on. I think it was Mr. Rice who contacted me and said would we be

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2 willing to do this to try and accommodate the
3 parties, and our response was that if it doesn't
4 change our total obligation we'll do whatever we
5 can to accommodate the parties.

6 Q. So any attempt to discuss that issue
7 occurred after the 25th?

8 A. Yes. I'm pretty sure that's
9 correct.

10 Q. It's your position on behalf of the
11 industry that that required negotiation and
12 agreement?

13 A. Which required negotiation?

14 Q. That if the state was going to pay
15 its lawyers and then seek payment from the panel
16 that that is something because it was not
17 contemplated by the parties that needed to have
18 an agreement between the industry and the State
19 of Florida?

20 A. It's something that hadn't been
21 discussed because it wasn't contemplated. We
22 hadn't discussed it.

23 Q. So you had to have an agreement?

24 A. It wasn't doing it our way which
25 didn't change our obligation our total

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obligation I did not consider to be a material change. So it was something we were more than willing to do. Obviously we couldn't imagine it out of thin air so we had to wait until someone raised it with us but it was something we were willing to do and I suspect willing to be able to do whenever it was raised.

Q. So the position the industry was after, the fact if the state wanted to pay its lawyers honoring its contractual obligations that they would be eligible to participate in the panel to seek reimbursement along the same terms as any of the private counsel could?

A. When we were asked to make the change of letting the State stand in the shoes of its lawyers, we said we would.

Q. As long as it was on the same terms and conditions?

A. Same terms. As long as our obligations didn't change. It was really a question of how do you, having the panel process proceed fairly, set a fee award and then the question really was, as I saw it, is how does that award get divided. To whom does it go.

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2 And that was we were very open to whatever the
3 parties wanted to propose on that.

4 Q. Now, at 1:30 in the morning, do you
5 have a recollection of Mr. Rice coming back to
6 the Attorney General's Office?

7 A. I can't tell you if it was 1:30 in
8 the morning. It was pretty late. It just
9 wasn't Mr. Rice, it was Attorney General
10 Butterworth, it was Mr. Rice. I don't remember
11 if Parker Thompson went with them or not.
12 Mr. Lewis and I think Mike Maher, but I don't
13 remember.

14 Q. What were you told?

15 A. We were told we had a deal.

16 Q. Were you told that all the lawyers
17 had agreed?

18 A. We were told that we had a deal --
19 you see, you're focusing on the lawyers. We
20 really weren't focusing on the lawyers. What we
21 had done that night was work out a deal that the
22 governor was willing to accept. The governor --
23 let me finish. The governor then said that he
24 and some of the others were going over to
25 wherever their trial team was to discuss it with

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them. And everything, all parts of it.

They then were gone for some period of time. They then came back, I can't tell if it was 1:30 or 12:30 or whatever. It was fairly late. They then came back and said we've got a deal.

Q. At any time prior to the departure to go to wherever they were going, since you don't seem to know where that was, but did anybody ever tell you that there was no deal unless the trial lawyers agreed on the fee provision?

A. Attorney General Butterworth I think had said that they would not be willing to sign unless their lawyers accepted the fee proposal.

Q. Did he tell you all the lawyers needed to accept it?

A. We didn't discuss it. I just assume when he's talking about his lawyers he's talking about his lawyers. We did not discuss about who among his lawyers. I assumed he was talking about his lawyers as a group.

Q. When you say "group," you're talking about the unanimous?

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2 A. A group is a group. We never
3 discussed -- I don't know how the lawyers in
4 this case on the other side or any case I work
5 on decide what they will do as a group. I don't
6 know if they require unanimity, majority vote or
7 what. I don't know. I know the results that
8 get reported to me by the people on the other
9 side but I don't know.

10 Q. Did the Attorney General tell you at
11 any time that he had the consent of the majority
12 of the lawyers?

13 A. He said we had a deal. It was as
14 simple as that. On all the terms, not just on
15 the fees, he said we had a deal.

16 Q. He walked back into the room and the
17 Attorney General turned to you and said we have
18 a deal and that was it?

19 A. They said. I don't know which words
20 to attribute to the Attorney General and which
21 words to attribute to Mr. Lewis and which words
22 to attribute to Mr. Rice, but they came back and
23 they said we had a deal. We still had to finish
24 some terms because there was still some issues
25 we hadn't finished yet to our satisfaction.

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Q. Did anyone tell you when they came back that the lawyers had agreed to the deal?

A. I think the answer to that is yes.

Q. Who told you that?

A. I'm pretty sure. I don't remember if it was -- again, I can't remember if it was Rice or Lewis or the Attorney General.

Q. Did he tell you, did they use the words that all the lawyers had agreed to the deal?

A. I already told you. That was not a subject that came up.

Q. Did anyone tell you that any lawyers had objected to the deal?

A. No, absolutely not.

Q. Did anyone tell you that any lawyers had left?

A. No.

Q. Did anyone tell you that had been a very heated argument?

A. I think Mr. Rice said that it had been a long discussion but that's -- I didn't hear the term "heated argument" or anything else.

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2 Q. Were you given any impression
3 whatsoever that there had been any dissent?

4 A. No. I mean I was told they had a
5 deal. I didn't consider it any of my business
6 to inquire into their, just as I won't tell you
7 our litigation tactics, I did not consider my
8 privilege or right to inquire into the specifics
9 of their discussions.

10 Q. So your focus was did I have a deal
11 or not?

12 A. Did I have a deal.

13 Q. Not which particular terms there
14 were a deal on?

15 A. Did I have a deal on, period. Did
16 we have a deal on all the material terms and we
17 still had things we were discussing. I think we
18 were debating the form of the release. I mean
19 these discussions went on for some time after
20 they came back. There were still terms being
21 negotiated and fought over and there were still
22 some negotiations, although I didn't consider
23 them major, that went on the next morning.

24 Q. Prior to Judge Cohen leaving, did
25 anyone say to Judge Cohen that the deal was

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contingent upon the trial lawyers agreeing to it?

A. I don't remember if that was said or not but when Judge Cohen left we didn't have a deal at all. I'm not talking about trial lawyers. We just didn't have a deal. There were many material terms we had not finished and what we told Judge Cohen was that we were going to work towards a deal and that we were hopeful but we couldn't guarantee we would get there and that we said if we could get there we would try to let him know. And he said "Well, you can wake me up" and I think General Butterworth said he didn't want to do that. He said "Send me a draft no matter what time." I don't think we did it because we didn't have one until about five or six in the morning.

Q. But you, that is you Arthur Golden, made it emphatically clear to the sitting judge that no agreement had been reached at that time?

A. I believe I did. It was clear to him, I can't tell you for sure which words I uttered and which words someone else uttered but it was clear that we did not have a deal at that

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point.

Q. And that no agreement had been reached?

A. A deal is an agreement. As I told you before, there was no deal until there was a document that everybody was willing to sign.

Q. Did you tell the judge that all material terms had been agreed to, that they just had not been codified in writing?

A. I don't think so.

Q. In fact, all material terms had not been agreed to, correct?

A. I think there was still some debate through the evening after the judge left about the form of the language of the release and some of the other provisions. Certainly if we hadn't agreed on that.

MR. LARMOYEUX: Let's take a break.

(Discussion off the record.)

(Recess taken.)

THE VIDEOGRAPHER: The time is

5:04. We are on the record.

MR. LARMOYEUX: I would like to get this marked, if I could please, as the

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2 next number of exhibit. It's Bates
3 stamped 492.

4 (Plaintiff's Exhibit 3, letter Bates
5 stamped 492, was marked for
6 identification.)

7 Q. Mr. Golden, I want to show you
8 what's been marked as Exhibit No. 3 and ask you
9 do you recognize that document?

10 A. Yes.

11 Q. When was there a concern expressed
12 by you to the Attorney General about the
13 non-taxability or the ability of obtaining tax
14 credits for any payments?

15 MR. BURTON: Object to the form.

16 A. I never expressed any concern about
17 that.

18 Q. That document, and for the benefit
19 of those folks on the phone it's a very brief
20 letter. Would you read it, please.

21 A. "Dear Attorney General: According
22 to our telephone conversation I'm writing
23 pursuant to the settlement agreement in the
24 above litigation are to be fully deductible for
25 Florida income tax purposes. If the foregoing

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correctly reflects our understanding, please indicate your agreement by countersigning this letter in the place indicated and please return a copy to me."

Q. Did you ever get a copy or countersigned letter from Attorney General Butterworth?

A. No.

Q. When did that issue come up?

A. Well, it wasn't really an issue in the sense that these payments were and are tax deductible. It was a provision that could have been put into an extra boilerplate provision that could have been put into the settlement agreement which in the rush on Sunday night, certainly without any tax lawyers present we didn't put in.

We had an understanding Sunday night as we were doing it because I remained concerned and told the other side that I was concerned about rushing through this documentation in the middle of the night that if there were any changes that needed to be made, obviously not changing the deal, but any changes that needed

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to be made to fix or explain the documentation that both sides would agree that that would be done.

I sent this to him for that reason, just to add what we would have put in as in my view a boilerplate tax provision. He never signed it though.

Q. Have you ever gotten any feedback as to why the Attorney General would not sign that letter if he agreed to it on that Sunday night?

A. We never discussed this letter on Sunday night.

Q. Or the concept?

A. We never discussed this subject Sunday night. We discussed the general concept I mentioned to you. Why he would not sign it, I never got a satisfactory answer, but he wouldn't sign it.

Q. Have you gotten any answer from anyone?

A. I got an answer that he wouldn't sign it but I never got any answer that I considered to be satisfactory.

Q. But the issue of taxability or

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non-tax credits, was that discussed in terms of content?

A. There was never any disagreement about that subject.

MR. BURTON: Object as to form.

A. I do not recall it being discussed. This payments are and in fact the Florida people have agreed that they are tax deductible.

Q. When you say the Florida people?

A. I don't remember who I had the discussion with.

Q. Would it have been Mr. Rice or the Attorney General's staff?

A. It could have been. I just don't remember.

Q. In your mind there was never any dispute that the payments were not tax deductible?

A. Right. There was never a dispute.

Q. And you have never been given a satisfactory explanation as to why the Attorney General's Office would not sign that letter?

A. Well, part of the explanation I was given is that we don't need it because there is

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no dispute and the payments are tax deductible,
but I did not consider that satisfactory answer.

Q. Well, did anyone ever tell you at
the Attorney General's Office that politically
to have executed such a letter would be
politically unpopular for the Attorney General?

A. No, I never had that conversation.

Q. At any time did you have any
discussions with any representative in all the
negotiations just strictly on the Florida deal
that if the State of Florida were to pay its
lawyers that it would be politically unpopular?

A. Say that. I think the answer's no.

Q. At any time prior to August 25th
when the agreement was executed, did anyone from
the State of Florida ever tell you that the
reason that they could not pay their lawyers is
because it would be politically unpopular?

A. I don't believe so.

Q. Whose idea was it that they wanted
to get the sitting judge down there to see you
on Sunday night?

A. Well, it certainly wasn't mine. I
think it might have been Attorney General

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1
2 Butterworth who suggested that it would be
3 appropriate to brief the judge before Monday
4 morning so this didn't come as a complete
5 surprise to him.

6 In fact, I think my memory's a
7 little fuzzy but I'm pretty certain about
8 Attorney General Butterworth and some of the
9 lawyers from the defense side said something to
10 the judge in chambers perhaps on Friday the
11 22nd, I'm not sure of the date.

12 Q. You were not privy to that
13 conversation, I take it?

14 A. No, I wasn't there, certainly not.

15 Q. That's not something that you as a
16 negotiator for Reynolds Tobacco wanted done?

17 A. Talk to the judge when?

18 Q. On Friday.

19 A. I think it was done with our
20 permission. I mean did we ask that it be done,
21 I think the answer is no, we didn't ask it was
22 done, but I think Attorney General Butterworth
23 informed us that he was going to do it. I'm
24 really fuzzy on this but I don't think he
25 brought the subject up to the judge without

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telling us that he was going to do it.

Then I think it was I don't know if the judge asked or if Attorney General Butterworth and our trial counsel suggested that it would be a good idea to give the judge a status report on Sunday afternoon or evening. It was decided somehow that that would be done and that's what happened.

Q. Your position is that what was presented to the judge at the Attorney General's Office was simply a status report?

A. We told the judge where we were and where we hoped to be. We gave him a report on what we had accomplished and what remained to be done and what we hoped to accomplish and that's exactly right. I called that a status report. You may call it something else.

Q. At no time was it your intent to get the judge down there and tell him that a deal had been reached because no deal had been reached?

A. We hadn't reached a deal at that point. I think obviously we're all there on a Sunday night in August at least part of the time

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without air conditioning so we all hoped that there would be a deal. But we hadn't reached a deal yet.

Q. And you had no idea at what point a deal would be reached?

A. I had an idea that we were certainly trying to reach one by the next morning for all the reasons we discussed earlier. So I had an idea I didn't know that we would be able to do it at all let alone by the next morning. We were continuing to work on the points that separated us and we obviously were negotiating very seriously and hoped that we would be able to resolve all the points.

Q. From your drafting of the agreement, have there ever been any time limits -- let's assume that there is no national proposed legislation, okay. Has there ever been any discussion with the State of Florida as to when payments to the State of Florida would cease under the August 25th settlement agreement with the State?

A. I don't think payments do cease. I mean, I don't follow the question.

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Q. Well, for example under the -- there has been reported that there was a cap at 25 years on the Florida?

A. All you have to do is read the agreement. We are obligated to make payments in accordance with the terms of that agreement. In that agreement I don't see any end date.

Q. And so from your perspective there was no side agreement where the payments were capped at 25 years?

A. No.

Q. You have used language in the agreement about the substantially equivalent of the proposed resolution. Has there ever been any discussion or any memorandums exchanged with the State of Florida of what that term means?

A. There has never been any memorandum exchanged and we recognized and we've used that in other settlements also, that language. And I think we recognize that to protect both parties' interest, we intend for the description of the proposed resolution that while it is not identical it is substantially equivalent to it. That's a term that we did not feel we could

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define precisely.

If a statute is passed that is not identical to the proposed resolution, then people will have to look at it and decide whether it's substantially equivalent. If we agree, that would be good. If we disagree then a court will have to decide who is right.

But it's just a term that the concept was agreed upon and we'll have to wait and see what a statute actually looks like.

Q. But in terms of at this time there has never been an exchange of any documents with the State of Florida where the term "substantially equivalent" was defined in terms of what national legislation might be?

A. Other than the use of the term in the settlement agreement and the discussion I just told you about, I'm not aware of anything else.

Q. Is it your position on behalf of the Reynolds Tobacco Company that if there was enacted national legislation that in any way attempted to cap or restrict attorneys' fees under the proposed legislation other than a \$500

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2 million a year cap, that that would not be the
3 substantially equivalent of the agreement that
4 was reached in Florida?

5 MR. IANNO: Object to form.

6 MR. BURTON: Same objection.

7 A. When a statute is passed we will
8 look at the statute and decide whether we think
9 it's substantially equivalent or not. I'm not
10 going to sit here and talk about any particular
11 term.

12 Q. Look at your letter of August, I
13 believe it's the 29th and I believe on the
14 second page --

15 A. Which version do you want? Which
16 draft do you want to look at?

17 Q. How about the version that certainly
18 we can find for you today but it's been
19 previously marked. Let's go ahead and use the
20 one that was signed. Actually what it is, it's
21 part of Koplow 2 and it's signed by you dated
22 August 29th, 1997.

23 A. Actually it wasn't signed by me, it
24 was signed for me.

25 Q. Signed with your consent?

Golden - Tape No. 1

A. Absolutely.

Q. Look to the last full paragraph on page 2, second sentence. It says "In the event the proposed resolution is enacted and contains provisions regulating attorneys' fees, the provisions of the Florida agreement in this outline would apply with respect to Florida counsel fees as long as the total to be paid by the companies in any year does not exceed the \$500 million cap."

Who insisted upon that provision?

A. I think Joe Rice brought it up and Mike Maher. We certainly agreed to it. What this was designed to do was to assure them that we would to the extent we were allowed to and that there was no act of Congress that specifically told us that we couldn't, which we didn't and don't anticipate, we would try to -- we expected to honor the parts of this agreement that relate to attorneys' fees and that we would treat the Florida people under the provisions that we were agreeing to provided that we didn't wind up paying, being obligated to pay more than \$500 million a year. And to the extent we were

Golden - Tape No. 1

1
2 allowed to, even if it was inconsistent with
3 something Congress later did, we didn't know
4 what Congress was going to do.

5 Q. To this day you don't know what
6 Congress is going to pass?

7 A. That's clearly true.

8 Q. Or pass anything?

9 A. That's clearly true also.

10 Q. Was there any discussion, any
11 example discussed with either Mr. Rice or
12 Mr. Maher about what that provision would
13 entail?

14 A. What provision would entail?

15 Q. What was contemplated. Obviously
16 there was a concern expressed by Mr. Rice and
17 Mr. Maher that Congress could attempt to pass
18 something that would regulate attorneys' fees?

19 A. That's right.

20 Q. Was there any discussion as to what
21 that might be?

22 A. Well, nobody knew.

23 Q. Was there any concern that you
24 expressed as to whether or not Congress could or
25 could not attempt to regulate fees as part of a

Golden - Tape No. 1

national settlement?

A. I can't control what Congress does. All I'm saying is that this was again, this was a response by us to try and make sure they were comfortable; that we intended to the extent we were permitted to comply with the format and payment obligations we were setting out in the settlement agreement and this letter. Subject to the fact, subject to the limitation that we were not going to get into a position where we had to pay more than \$500 million a year.

Q. When you say to the extent that you could do?

A. Well, Congress can pass a law, I think. I don't claim to be a Constitutional expert, but if Congress passes a law setting aside a certain private contract I think they have a right to do that or they may have the right to do that.

We were not going to violate any Congressional statutes in order to do this, but assuming we didn't have to we were going to do what we could, what we were permitted to do to conform with the obligations here subject to the

Golden - Tape No. 1

fact that we were not going to agree to get into a position where we would have to pay more than \$500 million a year.

Q. How many meetings did you have from June until August the 25th with representatives from the State of Florida where solely the issue was the discussion of the resolution of the State of Florida's claim?

A. Settlement of the State of Florida's case?

Q. Yes.

A. I don't remember. Clearly to the extent it was discussed before June 20th, it was not solely -- that was not the sole topic. After that, there were a number of meetings but I don't remember specifically how many.

Q. Do you remember a recollection at this time of any face-to-face meetings that you had with representatives from Florida about the resolution of the Florida case that Mr. Koplow was not privy to?

A. You mean a meeting that I attended that he didn't?

Q. Either by telephone or that he was

Golden - Tape No. 1

not represented there?

A. As I sit here, I can't think of any.

Q. To your knowledge did you have any telephone conferences with Mr. Rice about --

A. Well, actually, I wouldn't consider this. I'm trying to remember the date. In the week of August preceding that Sunday, so it would be something like August 20th when we finished our negotiating meeting for the day, we all went and checked into our hotel. Mr. Rice, an associate of mine and I had dinner and we continued discussing some things, but it was more of dinner that didn't last too long and Mr. Koplow was not at that. He didn't feel very well, I think he went to bed. That's the only thing I can think of.

Q. To your recollection was there any discussion as to how the fee issue would be handled or just general discussion about the settlement?

A. No, I think it was more general discussion about the settlement.

Q. At any time did you instruct the State of Florida that you did not want the issue

1 Golden - Tape No. 1

2 of attorneys' fees and how they would be handled
3 in any settlement with the private lawyers from
4 the State of Florida?

5 A. Say that again. I didn't
6 understand.

7 Q. Let me rephrase it. I know it's
8 late in the day.

9 At any time did you ever give any
10 instructions to Mr. Rice or to Attorney General
11 Butterworth or Mr. Maher that you on behalf of
12 tobacco did not want the private lawyers advised
13 of any proposed resolution of attorneys' fees
14 issue?

15 A. Absolutely not.

16 Q. Would you have walked away from the
17 table if the Attorney General on Thursday or
18 Friday had asked you was it all right to begin
19 bringing the private lawyers in the loop as far
20 as the issue of how attorneys' fees were going
21 to be handled?

22 A. Let me answer your question. It will
23 answer your question, but let me do it in a more
24 general way.

25 Our position in these negotiations

Golden - Tape No. 1

is that we didn't want leaks. We're public companies. We didn't want leaks because of stock market reasons. There was a case going on, we didn't want leaks because there was a jury pool being selected and we didn't want negotiations carried on in the newspapers with TV cameras following us all over the place.

Subject to that, we never said anything to Attorney General Butterworth or anybody else about who the state could or could not bring to a meeting or tell or talk to about anything. That's a general answer but it relates to the whole settlement. We did not separate the issues.

Q. You certainly would have had no objection for either Mr. Rice or Mr. Maher wanting to speak with the attorneys to see how they felt about contents involving attorneys' fees?

A. This is the same answer I just gave you. We didn't object to anyone on the State of Florida doing whatever they wanted to do as long as they took steps to maintain confidentiality that we wanted and they said they very much

Golden - Tape No. 1

wanted also.

Q. But as long as it was made
emphatically clear that no one is to advise the
press about what is taking place you certainly
had no objection?

A. As long as they -- I wasn't going to
get into the procedures by which they decided
who or how many people they included in their
discussion group. I was only interested in the
results that the discussions remained
confidential from the public. We didn't want to
have this debate and these negotiations in
public. It should be between the parties.

I did not ever and I don't believe
anybody on our side ever placed any numerical or
other limitation on who could or could not be
part of the discussion group on the State of
Florida's side.

Q. You were interested in preserving
the integrity of the process?

A. That's right. The integrity of the
negotiations in terms of their confidentiality.
That's really all we're concerned about.

Q. And certainly on the defense side

Golden - Tape No. 1

there were lawyers who were in the courtroom brought in at least with knowledge of settlement negotiations because they went and met with the judge to tell them on Friday?

A. Absolutely. My position is as I stated and on our side I regarded it as our decision and our business as to which members of the defense team we decided to bring into the discussions. It was with the same consideration. We wanted to make sure that the confidentiality and the integrity of the discussions were preserved, but other than that it was up to us to decide how to do that on our side.

Q. And certainly the Governor of the State of Florida never told you that you couldn't tell your trial lawyers about what was happening in terms of --

A. I never had any discussion on that subject with the governor of the State of Florida.

MR. LARMOYEUX: Give me just a moment, I think we're done. Mike, did you want to go ahead.

1 Golden - Tape No. 1

2 MR. ERIKSEN: I want the tobacco
3 guys -- I should not refer to them that
4 way. The other lawyers present, do they
5 want to ask questions, or should I
6 proceed?

7 MR. KOLB: I have no questions.

8 EXAMINATION

9 BY MR. ERIKSEN:

10 Q. Mr. Golden, this is Mike Eriksen. I
11 represent Mike Maher, who is also a defendant in
12 the case, and I have just a few questions.

13 I'd like to start by following up on
14 a couple of questions that you were asked at the
15 end just now by Mr. Larmoyeux for the plaintiff.

16 Do I understand that while serious
17 settlement negotiations were going on between
18 the tobacco industry and the State of Florida
19 leading up to the settlement that happened on
20 August the 25th of 1997 that there were some
21 people on the defense trial team who for
22 whatever reason were kept out of the loop and
23 were not informed of or otherwise aware of the
24 settlement negotiations?

25 A. I don't believe that everybody on

Golden - Tape No. 1

the defense trial team knew about the negotiations but I honestly couldn't tell you. I know of a few people who did, I don't know who else did. But to try to answer your question, I certainly don't believe that everybody on the team knew about it.

Q. In general terms, were there good reasons for letting some of the people on the trial team know but not other people?

A. On our side?

Q. Yes.

A. On our side the decision, and again I participated in the decision with respect to Reynolds. It was simply a decision not to disseminate the information any more broadly than necessary for fear of the leak and that was it. But I did not make the decision as to the identity of the people that would be included on the trial team I think I left that obviously to Mr. Weber who was the head of the trial team.

Q. But in general terms, is it fair to say that both sides were very interested in avoiding any premature leaks of this settlement process, the negotiation process to the media?

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A. Yes, that's absolutely right.

Q. In general terms was it common sense that fewer people that were led into the know on the about the ongoing settlement negotiations less chance of leaks there would be?

A. I think it's obvious the fewer people who know something the fewer people there are to talk about it. That's a decision we made on our side and it was up to Florida to decide who they wanted to tell, but they knew we were very concerned about confidentiality.

Q. I assume the State of Florida was also very concerned about confidentiality and leaks for reasons of their own?

A. That's right. They said they were and I did not inquire as to their reasons. I'm sure they had reasons.

Q. Let me just check my notes here just a second.

Let me ask you about some of the basic terms that ended up getting into the settlement agreement that was signed and adopted by the court on August the 25th, 1997, which I think was a Monday.

1 Golden - Tape No. 1

2 Is that right?

3 A. The court hearing I attended was a
4 Monday.

5 Q. Do you have a copy of that agreement
6 before you?

7 A. Actually, I do not.

8 MR. ERIKSEN: I'm not sure if
9 somebody there can get you one.

10 MR. LARMOYEUX: I can here, Mike.

11 MR. ERIKSEN: Can you do that?

12 MR. LARMOYEUX: No, we can't do it.
13 Forget it. That's Exhibit 7 to Chiles'
14 depo.

15 Q. Do you have that before you sir?

16 A. Yes.

17 Q. Look at page 14 of that.

18 A. Page 14. All right.

19 Q. In general terms, did the settlement
20 agreement between the State of Florida and the
21 tobacco industry that got signed and adopted on
22 August the 25th, 1997, make a reference to the
23 concept that the tobacco industry would pay
24 attorneys' fees to the state's private lawyers?

25 A. Yes.

Golden - Tape No. 1

Q. All right.

A. I mean, I have to find the language.

Q. I'm looking now at the first full paragraph. That starts about one-third down the page.

A. The concept part was obviously part of it and it is the first full paragraph.

MR. LARMOYEUX: Mike, let me interrupt. We've got a five-minute call on the tape. Are you going to be more than five minutes?

MR. ERIKSEN: Let me try to get it done in five minutes.

MR. LARMOYEUX: We can go ahead and switch the tape right now.

THE VIDEOGRAPHER: End of Tape No. 1 of the deposition of Arthur Golden.

(Discussion off the record.)

THE VIDEOGRAPHER: This is the beginning of Tape No. 2 in the deposition of Arthur Golden. It's 5:32. We're on the record.

MR. BURTON: We're ready, Mike.

Q. Mr. Golden, is it fair to say that

Golden - Tape No. 2

1 based on your involvement in the negotiation
2 process between the State and the tobacco
3 industry, that it was the State of Florida
4 primarily through General Butterworth that
5 insisted all along that tobacco as opposed to
6 the state would pay the attorneys' fees of
7 private counsel under this agreement?
8

9 A. The State of Florida insisted that
10 in addition to the numbers we were negotiating
11 that the tobacco companies that signed the
12 agreement agreed to pay costs and expenses and
13 fees. A negotiation then ensued in which we set
14 out what we were willing to do and that's what
15 the agreement reflects.

16 Q. Is it fair to say the concept of the
17 industry paying the fees as opposed to the state
18 paying the fees is something that got spoken for
19 and enunciated by both the governor and the
20 Attorney General at various times before the
21 case got settled?

22 A. If I understand your question, the
23 answer is yes. It certainly wasn't our proposal
24 to pay the fees.

25 Q. Right. What I'm getting at is it

1 Golden - Tape No. 2

2 also certainly wasn't something that Mike Maher
3 or Joe Rice came you on their own as
4 individuals?

5 Is that right?

6 A. I think that's clearly right.

7 Q. That's something that the State of
8 Florida through its governor and its Attorney
9 General wanted to have happen?

10 A. Well, I never discussed any of this
11 directly with Governor Chiles. It was clear to
12 me from various discussions where General
13 Butterworth was present that that was the
14 state's position and Mr. Rice communicated to me
15 that that was the state's position.

16 Q. That position from the state turned
17 out to be, at least from your position turned
18 out to be a non-negotiate position?

19 A. The negotiation was over the
20 question of what we would agree to be obligated
21 to pay. There we had certain limits but the
22 state clearly took the position that we had to
23 agree to pay something. What you see reflected
24 in this agreement is the result of the
25 negotiation.

Golden - Tape No. 2

1
2 Q. What I'm getting at is just in case
3 this is read back to a jury, the basic concept
4 of the industry paying the fees as opposed to
5 the state paying the fees was not something at
6 least from your perspective that Mr. Rice or
7 Mr. Maher cooked up to harm Mr. Montgomery or
8 Mr. Schlessinger or Mr. Kerrigan in some way?

9 Is that right?

10 A. I think the answer is right. The
11 dispute among the lawyers is really something.
12 I don't think the industry is or should be
13 involved. I mean I recognize that
14 Mr. Montgomery is suing the companies.

15 Q. Right.

16 A. This is and should be a dispute
17 among the lawyers. We only agreed to pay fees
18 because this state and certain other states
19 insisted on it during the negotiations.
20 Obviously if we had a choice of settling this
21 without paying the fees we certainly would have
22 preferred that it would have cost us less money.
23 Q. You understand the reason I'm asking
24 you these questions in this deposition is
25 because we did have a lawsuit where

Golden - Tape No. 2

1
2 Mr. Montgomery is here claiming that Mike Maher,
3 my client, conspired somehow with tobacco to
4 induce the State of Florida to breach an
5 obligation to Mr. Montgomery and we are here in
6 a deposition unfortunately and in a lawsuit
7 unfortunately.

8 A. Let me try and answer you this way.
9 It has been the position of the State of Florida
10 and every other state that we've negotiated
11 with, one of the things that the defendants in
12 settling these cases, it's not always the same
13 defendants, but the defendants have to agree to
14 do is to pay fees and expenses. And then the
15 negotiation ensues as to how much we're willing
16 to pay.

17 So these demands have clearly come
18 from the state in each case. Never from us and
19 never from anybody else as far as I can tell.

20 Q. Okay. Now, with regard to the
21 industry's position and what the industry was
22 willing to agree to in this negotiation process
23 is it fair to say that the annual cap concept,
24 in other words that there would be for any given
25 year a cap on what the industry would pay for

Golden - Tape No. 2

attorneys' fees, that is something that the industry insisted on?

A. Absolutely. That cap did not come up, did not first arise in connection with the discussion of the State of Florida. That had been discussed. The industry's position was communicated to, among others, Attorney General Butterworth in May or June, I can't remember.

But it was a position that as I mentioned earlier in this deposition related to the obligation we were under, willing to undertake for all of the fee awards we might be obligated to pay on a national basis.

Q. Is it fair to say that the concept of an annual cap on the fees that the industry would pay was not some novel idea that Mike Maher, for example, came up with in order to harm Mr. Montgomery or Mr. Schlessinger or Mr. Kerrigan in some way?

A. That I can answer very clearly. Mike Maher was not even there when we first discussed it. The idea or the concept of the cap was something that originated with the tobacco companies and that we put forth as a

Golden - Tape No. 2

proposal to deal with fee issues on a national basis and explain that these were the limits of what we were willing to obligate ourselves to.

That discussion first took place in the context of negotiating the proposed resolution, and although Mr. Rice was present for those negotiations, so was Attorney General Butterworth, Attorney General Moore and a variety of other people. Mr. Maher had nothing to do with that.

Q. Would it also be fair to say that Mr. Maher had nothing to do with the fact that there ended up being in the settlement agreement with Florida a provision that provided that the private counsel's attorney fees would get arbitrated?

A. I don't think Mr. Maher had anything to do with any of these terms really. I mean these were the terms that we had announced in connection -- any of these terms is too broad but most of the terms of the basic method of dealing with the fees were proposals that we had announced and positions we had taken as a limitation of the obligations of these companies

Golden - Tape No. 2

during the negotiations of the June 20th proposed resolution. And Mr. Maher, as far as I know, played absolutely no part in that.

Q. Did you appear at the settlement agreement signing ceremony at the courthouse in Palm Beach County on August the 25th, 1997?

A. Yes.

Q. Were you there at a time when the governor and the Attorney General were seated at counsel table in front of the judge, where the judge approved the settlement?

A. Yes.

Q. Did you notice whether or not Mr. Montgomery and other counsel for the state were seated at that counsel table also?

A. Well, I can answer your question this way. I certainly noticed that other counsel for the state were seated there. I did not notice anything one way or the other with respect to Mr. Montgomery because I think at that time I'm not sure I knew who Mr. -- I mean, I had heard his name but I don't think I would have recognized Mr. Montgomery.

Q. Had you ever met Mr. Montgomery?

1 Golden - Tape No. 2

2 A. Not at that time.

3 Q. Have you met him since?

4 A. I met him once a month or two later.

5 Q. Did you notice the demeanor of the
6 private counsel for the state that were seated
7 next to the Attorney General and the governor at
8 the settlement hearing?

9 A. Not especially. I mean.

10 Q. I guess what I'm getting, at did
11 they all seem to be smiling or were there any of
12 them that were unhappy or did you notice one way
13 or the other?14 A. The plaintiffs' side of the
15 courtroom looked a lot happier than the
16 defendants' side of the courtroom. But as to
17 whether there were any plaintiffs' lawyers or
18 partisans who were more or less happy than the
19 others, I really didn't notice.20 MR. LARMOYEUX: The happy index
21 wasn't working.22 Q. In the context of your dealings with
23 Mike Maher during the course of the litigation,
24 did he always appear to you to be acting in the
25 course and scope of his legal representation for

Golden - Tape No. 2

the State of Florida?

A. I certainly assumed he was and he never did anything to make me worry that he wasn't. So obviously I can't answer that question because I don't know, but he certainly always seemed to be a lawyer carefully representing his client.

Q. Did he ever appear to you or did he ever say or do anything that appeared to you that he was doing anything other than doing his best to represent his client the State of Florida?

A. I never noticed anything to that effect.

Q. During your contacts with him, did he ever to your knowledge take any position in negotiating that was in any way inconsistent with the best interests of his clients or the State of Florida?

A. Not to my knowledge.

Q. Did he and/or Mr. Rice attempt to get the tobacco industry to agree to methods of fee payment other than arbitration and other than involving a \$500 million per year annual

Golden - Tape No. 2

cap?

A. I'm going to have trouble answering the question because I don't, I can't really separate in my mind what Mike Maher was asking us to do and what Joe Rice was asking us to do.

Q. Right.

A. I think certainly from that side of the table, there was a ongoing request that we agreed to a cap of more than \$500 million a year. So in that sense they tried to get us to do something else. I can't remember -- repeat your question, because I think I got lost. I'm not sure.

Q. Yes. I just wondered obviously -- maybe it's not obviously.

Is it fair to say that the actual terms of the attorneys' fee agreement that got put into the settlement agreement represented the best that the industry was willing to do at that time?

A. Well, absolutely. That is all we were willing to do.

Q. Were there occasions in the negotiations where the negotiators for the State

Golden - Tape No. 2

of Florida attempted to get the industry to budge off of the arbitration concept or to budge off of the idea that there would be a \$500 million annual cap?

A. They certainly tried, and again I can't remember who it was. I know it has been Mr. Rice on various occasions. I don't remember if it has been Mr. Maher also.

They certainly tried to get us to raise the annual cap. I don't remember if they tried to get us to alter or abandon the arbitration concept but we made it very clear that we wouldn't do that.

Q. Did you make it clear that you wanted the arbitration to happen after a time that Congress either voted up or voted down the national resolution?

A. Yes, for the reasons I explained earlier.

Q. That was something that the industry was not willing to budge on at all?

A. That's correct.

Q. That was not a concept that was injected into the process by Mike Maher, for

Golden - Tape No. 2

example?

A. No, no. That was our concept. We were not willing to deviate from it.

MR. ERIKSEN: That's all I have.

Thank you very much.

MR. LARMOYEUX: Two quick questions.

EXAMINATION

BY MR. LARMOYEUX:

Q. Did Mr. Maher ever tell you on the morning of the settlement in the courtroom, did he ever approach you and tell you that he suspected that one of the private lawyers had filed a charging lien?

A. I don't remember that. I don't think so.

(Plaintiff's Exhibit 4, handwritten document, was marked for identification.)

Q. Let me show you --

MR. ERIKSEN: Chris, I can't hear you. Can you speak you up a little bit.

Q. Yes. Let me show you what's been marked as Exhibit No. 4. Do you recognize --

A. In fact, I'm pretty sure nobody did that because I think I was pretty surprised to

Golden - Tape No. 2

hear it either the next day or whenever I heard it.

Q. Let me show you what's been marked as Exhibit 4. Do you recognize that? Is that your handwriting?

A. It's not my handwriting.

Q. Do you recognize whose handwriting it is?

A. No, I really don't.

MR. LARMOYEUX: Okay. That's all I've got. Read, Mike?

MR. BURTON: Yes.

MR. ERIKSEN: No more questions.

THE VIDEOGRAPHER: It's 5:45. This is the end of Tape No. 2 of the deposition of Arthur Golden. We're off the record.

(Time noted: 5:45 p.m.)

Golden - Tape No. 2

I, the witness herein, having read the foregoing testimony, do hereby certify it to be a true and correct transcript, subject to the corrections, if any, shown on the attached page.

ARTHUR F. GOLDEN

Subscribed and sworn to
before me this day
of 1998.

Golden - Tape No. 2

CERTIFICATE

STATE OF NEW YORK)

: ss

COUNTY OF NEW YORK)

I, PATRICIA VIGIL, RPR, CSR, CRR,
CM, a Shorthand Reporter and Notary Public
within and for the State of New York, do hereby
certify:

That ARTHUR F. GOLDEN, the witness
whose deposition is hereinbefore set forth, was
duly sworn by me and that such deposition is a
true record of the testimony given by such
witness.

I further certify that I am not
related to any of the parties to this action by
blood or marriage and that I am in no way
interested in the outcome of this matter.

In witness whereof, I have hereunto
set my hand this 27 day of February 1998.

Patricia Vigil, RPR, CSR, CRR, CM
PATRICIA VIGIL, RPR, CSR, CRR, CM

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